

1 as a very blessed man, Judge. My family, my church, my
2 community have stood by me through this ordeal. I never set
3 out to corruptly bribe a judge. I never set out in my
4 initial -- when this thing started, to do anything of that
5 nature.

6 My attorneys and the Government's attorneys have allowed
7 me and have instructed me that, in fact, at the point at which
8 I joined this alleged conspiracy, that I was in fact, then, at
9 that point, a conspirator.

10 But in -- I feel that it's important that I say that it's
11 very -- from the outset, there was no intent on my part to ever
12 corruptly influence anyone. However, I do understand that once
13 I joined it and once the cat was out of the bag that I became a
14 coconspirator; and that's the reason I'm entering this plea.

15 **THE COURT:** All right. Well, my question on it to
16 you at this time is, Do you understand that the Government
17 would have to prove each of these elements that I just
18 described before you can be found guilty?

19 **THE DEFENDANT:** I do understand.

20 **THE COURT:** All right. Now, we'll get into this
21 other matter later in this hearing. You understand the maximum
22 possible penalty under this count is five years' imprisonment
23 plus a fine of \$250,000 and, also, a certain period of time
24 under supervised release after imprisonment? Are you aware of
25 that?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** All right. Has anyone threatened you or
3 forced you to plead guilty to this charge?

4 **THE DEFENDANT:** No, sir.

5 **THE COURT:** All right. I understand there has been a
6 plea agreement entered into between the defendant and the
7 Government.

8 Mr. Norman, would you state, briefly as you can, the
9 substance of that plea agreement?

10 Mr. Patterson, you listen to him; and I want to ask you,
11 then, if you agree with it.

12 **THE DEFENDANT:** (Nodding head affirmatively.)

13 **MR. NORMAN:** Yes, Your Honor. By the terms of the
14 plea agreement, Mr. Patterson agreed to plead guilty to Count 1
15 of the indictment charging him with conspiring with others to
16 corruptly influence or bribe a state-elected official. He has
17 agreed to cooperate with the United States Attorney's Office
18 and with agents of the FBI.

19 We have agreed that in the event his cooperation rises to
20 the level of substantial assistance that we will ask the Court
21 to consider a downward departure from the applicable guidelines
22 in this case. Mr. Patterson must understand that the decision
23 of whether or not to move the Court for such a departure is
24 ours.

25 Ultimately, the decision of whether or not to depart is

1 the Court's and the Court's alone. And we have explained that
2 to Mr. Patterson, but I feel it necessary to say that once
3 again on the record.

4 We have agreed to take the position that he is a minor
5 participant as compared with other defendants in this case.
6 That would, as the Court knows, under the guidelines, result in
7 a two-point reduction from the applicable guideline range.
8 Once again, Mr. Patterson must understand that that is our
9 recommendation. It's not an attempt to bind the Court in any
10 way; and ultimately, the Court has that discretion and the
11 Court alone. I know the Court knows that; but with the Court's
12 indulgence, I'm saying that for Mr. Patterson's benefit.

13 He has agreed to take a polygraph. He has agreed to
14 testify if we ask him to do so. We have agreed not to pursue
15 any other or greater charges against him in connection with
16 this case. There is no agreement as to sentence, the sentence
17 to be imposed. And both sides understand that that remains
18 within the sound discretion of the Court. He knows that he
19 must pay a \$100 special assessment; and I must remind him that
20 this plea agreement binds no other authority, other than the
21 United States Attorney's Office for the Northern District of
22 Mississippi. I will, however, say for the record that I do not
23 know of any other jurisdiction interested in prosecuting him.

24 Mr. Patterson agrees that he is pleading guilty because he
25 is in fact guilty. And that is, Your Honor, in summary, the

1 agreement between the parties, sir.

2 THE COURT: All right. Steven Patterson, you've
3 heard the prosecutor state his understanding of what the
4 agreement is between you and the Government. Did he accurately
5 state it as you understand it to be?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Is there anything he said that you
8 disagree with?

9 THE DEFENDANT: No, sir.

10 THE COURT: Has anyone made any promise to you in
11 addition to this plea agreement to cause you to plead guilty?

12 THE DEFENDANT: (Indicating.)

13 THE COURT: Anyone made any promise to you in
14 addition to this plea agreement to cause you to plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Has anyone made any prediction or promise
17 what your sentence would be?

18 THE DEFENDANT: No, sir.

19 THE COURT: Did you, as charged in Count 1 of this
20 indictment, enter into a conspiracy to bribe a state judge as
21 charged?

22 THE DEFENDANT: Judge, as I stated earlier, I have
23 been explained by my lawyer and the Government's lawyers that I
24 did. That was not my understanding at the time.

25 THE COURT: Well, the charge says that you

1 "willfully."

2 THE DEFENDANT: Right.

3 THE COURT: That means that you knowingly and
4 intentionally went in to this -- to join this conspiracy. Did
5 you or did you not?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Mr. Norman, what, in summary,
8 could the Government produce as far as evidence against
9 Mr. Patterson in a trial?

10 MR. NORMAN: May it please the Court, were this case
11 to go to trial, the Government would expect to prove by
12 judicial notice, the presentation of documentary evidence, and
13 tape recordings and the factual testimony of lay witnesses that
14 between March of 2007 and November 2007 in the Northern
15 District of Mississippi Timothy R. Balducci, Richard F.
16 "Dickie" Scruggs, David Zachary Scruggs, Sidney A. Backstrom,
17 and Steven A. Patterson conspired to bribe a state circuit
18 court judge.

19 The evidence would show that Steven A. Patterson and
20 Timothy R. Balducci were shareholders in the law firm of
21 Patterson Balducci, PLLC. The evidence would also show that in
22 March 2007 a lawsuit was filed in the circuit court of
23 Lafayette County, Mississippi, styled *Jones, et al. v. Scruggs,*
24 *et al.*, that being Civil Action No. L07-135.

25 Patterson and Balducci had previously performed legal work

1 for the Scruggs Law Firm, but they were not parties to the suit
2 nor did they represent any of the litigants in that case. The
3 case was assigned to State Circuit Judge Henry Lackey. And the
4 defendant, Richard F. "Dickie" Scruggs, and the Scruggs Law
5 Firm were named as defendants in that \$26.5 million lawsuit.

6 In approximately March 2007, the named coconspirators
7 discussed ways and means of attempting to influence Circuit
8 Judge Henry Lackey. Knowing that Timothy R. Balducci and Judge
9 Lackey had been friends for many years, Richard "Dickie"
10 Scruggs asked Balducci to explore the possibility of
11 influencing the judge.

12 Mr. Balducci thereafter met with Judge Lackey and
13 explained to the judge that he would consider it a personal
14 favor if the judge could resolve the lawsuit in favor of Dickie
15 Scruggs and the Scruggs Law Firm. During the same
16 conversation, Balducci expressed the desire to have Judge
17 Lackey become "of counsel" with his and Steven A. Patterson's
18 law firm upon his retirement. "Of counsel" being a position
19 which would result in Judge Lackey being paid by the firm
20 simply to allow the use of his name on the firm's letterhead.

21 On September 21st, 2007, Judge Lackey tested the
22 coconspirators' intent by asking for \$40,000 in cash in
23 exchange for an order favorable to the Scruggs Law Firm.
24 Immediately after meeting with Judge Lackey and agreeing on the
25 \$40,000 figure, Balducci placed a four-minute phone call to the

1 Scruggs Law Firm and asked Sidney Backstrom if the Scruggs Law
2 Firm would cover a \$40,000 expenditure by Patterson Balducci,
3 PLLC.

4 On September 27th, 2007, Timothy Balducci delivered a
5 first installment, consisting of Patterson Balducci, PLLC's
6 \$20,000 to Circuit Judge Henry Lackey. On September 28th,
7 2007, Steven A. Patterson and Timothy R. Balducci spoke by
8 telephone; and unbeknownst to either, the call was being
9 recorded pursuant to Court order.

10 Patterson told Balducci that his wife had just gotten off
11 the phone with "P.L." -- that being known to the Government as
12 P.L. Blake -- who had just gotten out of the meeting that
13 Patterson had asked him to have. Balducci asked Patterson to
14 call P.L. for details. Patterson called back and related to
15 Balducci that P.L. had in fact met with Dick Scruggs, and "he"
16 knows it's going to be "40." Patterson assured Balducci that
17 P.L. was confident that Scruggs would take care of Patterson
18 and Balducci. "We got your horse sold" or words to that
19 effect.

20 On October 7th, 2007, Timothy Balducci called Steven A.
21 Patterson at approximately 5:48 p.m. Patterson told Balducci
22 that he had just talked to P.L., and that he -- Steve
23 Patterson -- would be calling "the guy in Oxford tomorrow."
24 Patterson assured Balducci that "the guy in Oxford" was
25 expecting a call. And on the following day, October 8th, at

1 approximately 8:17 a.m., Balducci called Patterson. Patterson
2 indicated that he was about to call Scruggs.

3 In a second telephone conversation that same date, Timothy
4 Balducci and Steven Patterson discussed the firm's financial
5 problems; and Patterson reassured Balducci that, "We've got 40
6 coming from Scruggs" or words to that effect.

7 On October 10th, 2007, at approximately 8:55 a.m., Steven
8 Patterson called Timothy Balducci and informed Balducci that he
9 needed to find out when "that order" was going to be signed.
10 Patterson stated that P.L. needed to know.

11 Timothy Balducci is expected to testify that on
12 approximately the 16th of October, 2007, Timothy Balducci and
13 Steven Patterson were in Oxford to meet with Richard "Dickie"
14 Scruggs on other matters. When they entered the office,
15 Richard "Dickie" Scruggs stated, "I know y'all have talked to
16 P.L., and I've talked to P.L. Everything's fine. Y'all are
17 going to be covered," or words to that effect. Patterson and
18 Balducci assured Scruggs that they were there for other
19 reasons.

20 Later that day, after leaving the Scruggs Law Firm,
21 Patterson and Balducci went their separate ways. However, at
22 approximately 7:30 p.m., Timothy Balducci called Steve
23 Patterson and told Patterson that he had just spoken with the
24 judge and that the order would be available the next day. It
25 was actually two days later, on October the 18th, when Timothy

1 Balducci met with Circuit Judge Henry Lackey, paid him an
2 additional \$10,000; and picked up a proposed order from Judge
3 Lackey.

4 In the meantime, a Court-authorized intercept picked up a
5 phone call from Richard "Dickie" Scruggs to Steven Patterson at
6 Patterson's residence. Scruggs was inquiring about the
7 whereabouts of Balducci and the order. Patterson assured
8 Scruggs that Balducci had gone "south" -- meaning to Judge
9 Lackey's chambers in Calhoun County -- but would hand-carry the
10 order to Oxford. Scruggs told Patterson to have Balducci put
11 it on his desk and pick up a package which was ready.

12 Balducci was surveilled entering the Scruggs Law Firm and
13 leaving Judge Lackey's chambers. Balducci left the order and
14 picked up a check for \$40,000, together with documents designed
15 to conceal the true nature of the payment. On November 1st,
16 2007, Timothy Balducci made the final payment of 10,000 to
17 Judge Henry Lackey.

18 And finally, the Government would show that the
19 above-described criminal activities took place in the Northern
20 Judicial District of Mississippi, and that the Lafayette County
21 Circuit Court is a state or local governmental agency which
22 received in the applicable one-year period benefits in excess
23 of \$10,000 under a federal program. Your Honor, in brief
24 summary, that is the evidence that would apply to this
25 defendant, Steven Patterson.

1 **THE COURT:** Very well. Mr. Patterson, did you do
2 everything that Mr. Norman described you as having done?

3 **THE DEFENDANT:** Some of what he read, I don't have
4 any way of knowing whether it happened or not, like the e-mails
5 between parties that didn't affect me.

6 **THE COURT:** No. My question is, Did you do what he
7 just described that you did?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** You did do that?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** The Court finds there is a factual basis
12 for this defendant to plead guilty to this charge. Now,
13 Mr. Patterson, you understand that this plea agreement that you
14 entered into with the Government is not binding on the Court;
15 and, that is, that as far as your being determined -- when the
16 Court computes the sentencing guidelines, that you may or may
17 not be found to be a minor participant; that that would be up
18 to the probation officers who look at the evidence and decide
19 what the sentencing guidelines call for? Are you aware of
20 that?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** All right. And you're also aware that
23 the sentencing guidelines are no longer binding on the Court,
24 they are advisory?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** Very well, with that understanding, do
2 you plead guilty or not guilty to Count 1 of this indictment?

3 **THE DEFENDANT:** Guilty, Your Honor.

4 **THE COURT:** All right. Since you are telling me that
5 you are guilty; you know what your right is to a trial; you
6 know what the maximum possible punishment is; and the Court's
7 finding you're voluntarily pleading guilty; the Court will
8 accept your guilty plea and enter a judgment of guilty on your
9 plea.

10 All right, Mr. Patterson, are you under bond at this time?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** All right. If you're allowed to stay
13 under that same bond, do you agree to be back before the Court
14 at such times as the Court may direct?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** All right. Now, I'll allow you to remain
17 under that bond; and you will be excused until such time as
18 you're notified to be back for sentencing. I will tell you
19 that your cooperation with the Government will certainly be a
20 factor that the Court will consider and the extent of your
21 cooperation will be a factor the Court will consider in
22 determining what sentence would be proper in your case, not
23 only in this particular case but any information you provide on
24 any other case, if you know any. And the Court will take that
25 into consideration. Is there anything else before we recess?

1 MR. NORMAN: Not from the Government, Your Honor.

2 THE COURT: Anything from the defendants?

3 MR. MICHAEL: No, sir, Your Honor.

4 THE COURT: All right. With that understanding,
5 you'll be allowed to remain on your same bond. Be back before
6 the Court at such future time as the Court directs.

7 THE DEFENDANT: Thank you, sir.

8 MR. MICHAEL: Thank you, sir.

9 MR. NORMAN: Thank you, sir. May we be excused, Your
10 Honor?

11 THE COURT: All right. Court will be in recessed.

12 (THE PLEA ENDED AT 10:23 a.m.)

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C E R T I F I C A T E

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I, Rita Davis Sisk, RPR, BCR, CSR #1626, Official Court Reporter for the United States District Court, Northern District of Mississippi, was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I, Rita Davis Sisk, RPR, BCR, CSR #1626, have caused said stenographic notes to be transcribed via computer, and that the foregoing pages are a true and accurate transcription to the best of my ability.

Witness my hand, this ____ day of _____, 2008.

RITA DAVIS SISK, RPR, BCR, CSR #1626
Official Court Reporter

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5 IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

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13 JONES, FUNDERBURG,

14 SESSUMS, PETERSON & LEE, PLLC PLAINTIFFS

15 VERSUS NO. L2007-135

16 RICHARD SCRUGGS, INDIVIDUALLY

17 DON BARRETT, INDIVIDUALLY;

18 SCRUGGS LAW FIRM; BARRETT

19 LAW OFFICE; NUTT & MCALISTER

20 & LOVELACE LAW FIRM DEFENDANTS

21

22

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26 TRANSCRIPT OF CHRISTY M. LITTLEJOHN, CSR

27 OFFICIAL COURT REPORTER

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1 IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

2 APRIL TERM, 2008

3

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5 SESSUMS, PETERSON, & LEE, PLLC PLAINTIFFS

6 VERSUS NO. L2007-135

7 RICHARD SCRUGGS, INDIVIDUALLY;

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10 LAW OFFICE; NUTT & MCALISTER

11 & LOVELACE LAW FIRM DEFENDANTS

12

13 * * * * *

14 TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE

15 SANCTIONS HEARING OF THE ABOVE STYLED AND NUMBERED

16 CAUSE, BEFORE THE HONORABLE WILLIAM F. COLEMAN, SPECIAL

17 CIRCUIT JUDGE, IN LAFAYETTE COUNTY ON THE 15TH AND 16TH

18 DAYS OF APRIL, 2008.

19 * * * * *

20

21 APPEARANCES:

22

23 Present and Representing the Plaintiffs:

24 Honorable Grady Tollison
25 Honorable Roy Percy
Honorale Cameron Able
26 Honorable Bill Duke
Tollison Law Firm
27 Post Office Box 1216
Oxford, Mississippi 38655

28

29

3

1 Present and Representing the Defendant,
Richard Scruggs and Scruggs Law Firm:

2

Honorable J. Cal Mayo, Jr.
Honorale Pope Mallette
Mayo Mallette, PLLC
4 Post Office Box 1456
Oxford, Mississippi 38655

5

6

Honorable Brook Dooley
Keker & Van Nest
710 Sansome Street
7 San Francisco, California 94111-1704

8

9

10 Present and Representing the Defendants,
Barrett Law Firm, Nutt & McAlister,
11 and Dewitt Lovelace:

12

Honorable Larry Moffett
13 Honorable Wilton V. Byars, III
Daniel, Coker, Horton & Bell
14 Post Office Box 1396
Oxford, Mississippi 38655

15

Honorable Ken Rutherford
Attorney at Law
Post Office Box 1381
17 Oxford, Mississippi 38655

18

19 mentioned that -- I don't believe he mentioned any of
20 the judges that were coming on of counsel at that time.

21 Q. At the first meeting?

22 A. At the first meeting.

23 Q. You later learned that there were some
24 judges?

25 A. Later on he did.

26 Q. Did you receive a copy of an announcement
27 that he sent out?

28 A. I did.

29 Q. And it had, I believe, Judge Gillespie listed

Cross-Examination - Henry L. Lackey

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1 on there?

2 A. Judge Gillespie. Mr. Peters, I believe, was
3 on there. Maybe Bill Allain. I know he discussed the
4 former Governor Allain, and Former Chancellor Shands,
5 Rodney Shands.

6 Q. Okay. So you at some point became aware
7 having people of counsel with his firm was something
8 that his firm was doing?

9 A. He had them of counsel, yeah.

10 Q. In that first meeting, did Mr. Balducci tell
11 you that it would be a personal favor to him if you
12 would send the matter to arbitration? Is that what he
13 told you?

14 A. He did.

15 Q. And that it would benefit him if you would do
16 this?

17 A. He would count it a personal favor if the
18 court would consider that; that he felt that they had
19 been treated wrong and he would consider it a personal
20 favor if I would do that.

21 Q. And at that time when you had that first
22 meeting, there was no summary judgment motion pending
23 or a motion to strike pending or anything of that sort,
24 was there?

25 A. No, no.

26 Q. Not that you know of?

27 A. No, there wasn't. I didn't know anything
28 about the lawsuit other than what he told me and that
29 it was the one that I had sealed apparently.

Cross-Examination - Henry L. Lackey 62

1 Q. In the course of talking to you about the
2 lawsuit, did there come a time, Judge Lackey, when you
3 told him to stop? Wait a minute. This is a case I'm
4 involved in?

5 A. No, I didn't tell him that. I was shocked.
6 He knew that I was involved in it. There wasn't any
7 need of me telling him what he already knew. I was
8 shocked that he would make that overture to me. I was
9 incensed. I actually became physically ill because of

10 it.

11 Q. Judge Lackey, in the practice in this
12 district among circuit judges, is it a fair statement
13 that the judges will at times handle -- different
14 judges will handle the same cases?

15 A. Different judges will handle the same cases,
16 yes, sir, it is.

17 Q. Okay.

18 A. We travel seven counties and we assign terms;
19 and if a case is set for trial in Tippah County and I
20 have a ruled on a motion on it but I'm in Lafayette
21 County and Judge Howorth is in Tippah County, rather
22 than delaying the trial, we go ahead and hear it.

23 Q. Yes, sir, your Honor. You said earlier at
24 some point I think towards the end of this conversation
25 Mr. Balducci mentioned to you that when you stepped
26 down from the bench and laid your gavel down you could
27 come and be of counsel with his firm. Mr. Balducci did
28 not say to you, Judge Lackey, that I will give you this
29 position of counsel if you will do this for me?

Cross-Examination - Henry L. Lackey

63

1 A. He didn't tell me that. That was my
2 perception though.

3 Q. And he didn't say anything about paying any
4 money during that first meeting?

5 A. Not at that time, no, he didn't.

6 Q. Did you have any thoughts about who it was
7 that might have sent Mr. Balducci to see you?

8 A. Well, the only thoughts I have is from the
9 matter that was pending in the -- that has been pending
10 in the United States District Court and the evidence
11 that was introduced over there.

12 Q. Contemporaneous from when this happened, did
13 you have any thoughts that maybe somebody else was
14 involved and sent him to see you?

15 A. I didn't know who was involved. He said
16 they. He mentioned Mr. Scruggs and Mr. Barrett. I
17 don't know whether he mentioned Mr. Sparky or what his
18 last name is I can't remember. I remember he was
19 talking about Mr. Nutt and Mr. Nutt's position was that
20 he was going to fund this by putting up \$1,000,000 a
21 year for the group and that other lawyers would do the
22 lawyering and that Mr. Nutt was to put up the
23 \$1,000,000 a year is the only thing I remember about
24 that.

25 Q. After this meeting, Judge Lackey, I believe
26 you said that you spoke with Judge Howorth?

27 A. Pardon?

28 Q. Judge Howorth?

29 A. I did. I did. I spoke with Judge Howorth

16 Q. And it was in this call, Judge Lackey, that
17 you told Mr. Balducci, as I understand what you said
18 earlier, you told Mr. Balducci that there was a hearing
19 that was set on the Motion to Compel Arbitration and
20 that you had not seen a summary judgment motion?

21 A. That's right.

22 Q. And Mr. Balducci in response to your phone
23 call faxed you a proposed order; is that right?

24 A. He did. He said that they had changed their
25 tactics, I believe.

26 Q. And then he called you later that same day
27 that he sent you the order? Do you recall that?

28 A. He probably did.

29 Q. And I believe his words to you were something

Cross-Examination - Henry L. Lackey 68

1 to the effect of that the order was just an idea, just
2 some thoughts he had put on paper just for you to
3 consider? Do you recall him telling you that?

4 A. I think so. He said that I could change it
5 any way I felt comfortable with.

6 Q. And during that phone conversation on the 4th
7 or on the 3rd, there is no mention about the payment of
8 any money to you?

9 A. No.

10 Q. And there was no mention about a quid pro

11 quo, if you will do this, we will do that?

12 A. No.

13 BY MR. TOLLISON: Excuse me. If I may, your
14 Honor, I would like to object. I don't know
15 whether we are trying to present a defense to
16 something where there are five guilty pleas
17 already in evidence. All this has no relevance to
18 about whether they bribed a judge or not, and I
19 object to it. I don't know what they're trying to
20 do to present a defense to something where there
21 are already five guilty pleas on record.

22 BY THE COURT: Overruled. Move along.

23 BY MR. MAYO: (Continuing)

24 Q. Judge Lackey, at the end of that phone
25 conversation on May 4th, did you say something to Mr.
26 Balducci inviting him to have a meeting with you, words
27 to the effect of, Can you be here Wednesday? Can we
28 hunker down about three or four o'clock?

29 A. We need to hunker I think is what I told

Cross-Examination - Henry L. Lackey

69

1 him.

2 Q. You need to hunker?

3 A. That sounds like my language.

4 Q. So you invited him to come meet with you?

5 A. Surely.

6 Q. And whose idea was it for him to come and

7 meet with you? Is that the FBI's idea?

8 A. Well, I think it was a joint idea with me and
9 Tim. He certainly didn't have to come.

10 Q. Right. So you met with him on the 9th. In
11 the meeting on the 9th, did Mr. Balducci mention
12 anything to you about money at that meeting?

13 A. No. There wasn't any mention about money
14 until I mentioned it finally I believe it was in
15 September. I said, This show has got to stop. I have
16 lived with this thing since March and I want to bring
17 it to a head one way or the other. I just hoped
18 against hope that when I mentioned money to him that he
19 would say, Wait a minute, Judge. You got me all
20 wrong. I really thought that's what would happen. You
21 got me all wrong. Please excuse what I said and I
22 didn't intend that in any way. That would have been
23 the greatest gift that he could have given me.

24 Q. So just to be clear, Judge Lackey, there's no
25 mention of money and there's no mention of a quid pro
26 quo until September of 2007 when you brought it up?

27 A. I asked him, I said, If I take care of Mr.
28 Scruggs, will he take care of me? He said, That is no
29 problem.

Cross-Examination - Henry L. Lackey 70

1 Q. Do you recall in this May 9 meeting telling

2 Mr. Balducci that you thought the matter should go to
3 arbitration; that the agreement was pretty clear?

4 A. I probably did. I probably did.

5 Q. Judge Lackey, I believe the next contact with
6 Mr. Balducci was on May 21 towards the end of the month
7 when you tried to call him several times. In a
8 conversation with him on the 21st, you said to him, "I
9 just want to hear you say it again. You and Scruggs
10 are the only ones that know anything about this?" Do
11 you recall telling him that?

12 A. I did.

13 Q. And in that same conversation Mr. Balducci
14 said to you, "You should just do what you think is
15 right. I don't mean to make you uncomfortable. If
16 it's not something you feel right about, you do what
17 your heart tells you."

18 A. Yeah.

19 Q. "I've got complete confidence that this is
20 completely fine." Do you remember him telling you all
21 that?

22 A. Right.

23 Q. "I don't want you to do anything you're not
24 comfortable with. I don't want you to do anything that
25 you aren't comfortable with. I respect you too much
26 for that." Do you recall him telling you that on the
27 21st?

28 A. He did.

29 Q. So at this point at the end of May, Mr.

Cross-Examination - Henry L. Lackey 71

1 Balducci has made no quid pro quo offer and he has
2 offered no money?

3 A. He was lying to me and I was lying to him.
4 That's what had happened.

5 Q. And this had been going on now for about a
6 month after you first met with the FBI back at the end
7 of April?

8 A. Pardon?

9 Q. You had met with the FBI about a month before
10 this back at the end of April?

11 A. I had met with them several times, yes, sir.

12 Q. That's fair, but the initial meeting you had
13 with them was back towards the end of April?

14 A. Right.

15 Q. And I believe the next thing that happened,
16 Judge Lackey, was your recusal. I believe Mr. Tollison
17 asked you some questions. I will hand you both of
18 these at the same time, if that's all right.

19 A. These appear to be the same. No, they
20 don't. One is my fax transmission to them on May the
21 21st where I tell them that I'm going to recuse myself,
22 and then June the 4th I decide I'm going to get back in
23 the case.

24 BY MR. MAYO: I will have these marked as the
25 next numbered exhibit.

26 BY MR. TOLLISON: To be consistent, your
27 Honor, I will object on relevancy.

28 BY THE COURT: Overruled. Admitted.

29 (EXHIBIT D-17, MAY 21, 2007 FAX, WAS MARKED

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1 AND RECEIVED INTO EVIDENCE)

2 (EXHIBIT D-18, JUNE 4, 2007 FAX, WAS MARKED

3 AND RECEIVED INTO EVIDENCE)

4 BY MR. MAYO: (Continuing)

5 Q. Judge Lackey, do you have a recording device
6 in your office?

7 A. Have a what?

8 Q. A recording device in your office?

9 A. I do.

10 Q. Did you use that recording device for any of
11 the tape recordings that were made?

12 A. Oh, yeah, yeah. It was a little tape
13 recorder that I got from Office Max or some of them
14 that I gave -- I would give the tapes to the FBI when
15 they came in. They furnished me one, but it seems like
16 I'm electronically challenged and I couldn't get it
17 turned on properly.

18 Q. Judge Lackey, did you have any discussions
19 with the U.S. Attorney's Office or anyone from the FBI
20 about your decision to recuse yourself before you sent
21 out the May 21 letter to counsel?

22 A. I don't remember whether I did or I didn't.
23 I know I didn't have any discussions with them about
24 recusing myself -- I mean, when I sent the letter
25 saying that I was going to recuse myself. That was my
26 decision. I didn't feel like I was getting anywhere.
27 I was getting frustrated with the situation.

28 Q. How did you let the U.S. Attorney's Office or
29 the FBI know that you had, in fact, recused yourself or

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1 you were in the process of doing it?

2 A. Called John Hailman -- well, wait a minute.
3 I reported it to Bill Delaney, the FBI agent. John
4 wasn't in that day, I don't believe.

5 Q. Okay. I believe your letter, the notice
6 letter is dated May 21. How long after that was it
7 before you had a meeting with somebody from the federal
8 government about your recusal or your plan to recuse
9 yourself?

10 A. I don't know. You have it in there in that
11 transcript.

12 Q. Well, I don't have the transcript. I've got
13 your notes here.

14 A. What do my notes say there?

15 Q. On May 22nd that William Delaney was in my
16 office when I returned from lunch.

17 A. Okay.

18 Q. Do you recall him being there?

19 A. Oh, yeah.

20 Q. Did you know he was going to come see you?

21 A. Surely.

22 Q. Okay. And what did Agent Delaney, what was
23 that conversation about?

24 A. It was about the investigation and whether or
25 not I should get back in the case or not. That's what
26 it was about.

27 After talking with him and after realizing what a
28 monster that we were probably dealing with and the
29 lives that he had probably destroyed and the young

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1 lawyers whose lives and their families that he had
2 destroyed, I agreed to get back in it.

3 Q. And who is the he that you're referring to,
4 Judge Lackey?

5 A. Pardon?

6 Q. Who is the he you're referring to?

7 A. Talking about Dickie Scruggs.

8 Q. Okay. And who was it that told you that Mr.
9 Scruggs had destroyed those lives?

10 A. Pardon?

11 Q. Who was it that told you Mr. Scruggs had
12 destroyed all those lives?

13 A. It's evident what he's done. It's evident.

14 You don't think he's destroyed them?

15 Q. Judge Lackey, I'm just asking was that part

16 of the discussion you had with Agent Delaney and Mr.

17 Hailman?

18 A. I didn't know for sure at that point, didn't

19 know what type of monster we were dealing with, but I

20 realize now. I think he's done more to destroy this

21 profession than anything that's happened in my life

22 time.

23 Q. Yes, sir, Judge Lackey. My question is about

24 your discussion with Agent Delaney though. Is that

25 something that y'all discussed or did you discuss that

26 with Mr. Hailman?

27 A. Well, Tim had assured me that he and Dickie

28 Scruggs were the only ones that knew about this and so

29 I assumed that he knew what he was talking about.

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1 Q. Judge Lackey, my question is did you have a

2 discussion with either Agent Delaney or Mr. Hailman

3 about the lives that Dickie Scruggs had destroyed? Was

4 that part of the discussion that you had with them?

5 A. No, no, not at that time. Not at that time.

6 Q. So did Agent Delaney or Mr. Hailman encourage

7 you to get back in the case?

8 A. Pardon?

9 Q. Did Agent Delaney from the FBI or Mr. Hailman
10 encourage you to get back in the case; in other words,
11 to undo your recusal?

12 A. They did. They did ask me to get back in the
13 case. They did. I related to you the conversation
14 that I had with the District Attorney, Assistant
15 District Attorney, and what had happened with Mr. Hood,
16 Jim Hood. I knew about that from several months before
17 when Mr. Hood was -- even before the qualifying date to
18 run for Attorney General, I knew that he had reported
19 that to his good friend Lon Stallings and Lon told me,
20 and I took it as truth.

21 BY MR. MAYO: Your Honor, I move to strike.

22 BY THE COURT: Sustained. Move on. How much
23 longer do you anticipate?

24 BY MR. MAYO: About another 20 minutes.

25 BY THE COURT: Okay. Go ahead.

26 BY MR. MAYO: (Continuing)

27 Q. After your May 21 notice about the recusal
28 and before the June 4 unrecusal, did you have a
29 discussion with Mr. Balducci? Do you recall?

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1 A. Say that again now.

2 Q. Between May 21 when you sent out the notice
3 of recusal and June 4 when you sent out the notice of

4 unrecusal, did you have a conversation of some type
5 with Mr. Tim Balducci?

6 A. I don't know whether it was between there or
7 not, but I have discussion with him explaining to him,
8 which was a fabrication, as to why I got out and why I
9 got back in.

10 Q. That's when that conversation took place?

11 A. That's correct.

12 Q. Okay. And in that conversation with you in
13 that time period, and I believe it was on the 29th, but
14 whenever it was between the 21st of May and the 4th of
15 June, did Mr. Balducci tell you words to this effect, I
16 didn't want to do anything to jeopardize my
17 relationship with you?

18 A. He did.

19 Q. I didn't want to do anything in the world
20 ever to harm you. Do you recall him telling you that?

21 A. Uh-huh.

22 Q. And it would break my heart if I thought I
23 had put you in a bad position?

24 A. Yeah.

25 Q. At some point you went up to New Albany and
26 had lunch with Mr. Balducci during this time frame,
27 didn't you?

28 A. I believe it was before then. I went up to
29 New Albany and we went out to the auction barn to have

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1 lunch with he and Steve Patterson, a black man that was
2 a runner or investigator for them, and then a Mr. Buse,
3 I believe is his name.

4 Q. I'm looking at your notes on Wednesday, May
5 30th that says, "I was at the courthouse in New
6 Albany. Tim was waiting for me. He had invited me to
7 lunch." Is that the meeting you're talking about?

8 A. That's right.

9 Q. Now, at that time, Judge Lackey, were you
10 wearing some kind of a recording device on you?

11 A. I was.

12 Q. Did Mr. Balducci mention anything at that
13 lunch meeting that you had about the Jones' case?

14 A. No.

15 Q. Did he mention anything with you about trying
16 to pressure you to get back into the case?

17 A. Oh, no.

18 Q. And you were in the vehicle alone with him at
19 different times; were you not?

20 A. Pardon?

21 Q. Were you in the vehicle alone with Mr.
22 Balducci at some point?

23 A. I was.

24 Q. So you had lunch with some other people, but
25 you were alone with him in the vehicle?

26 A. After lunch, Tim and I drove down to look at
27 their new building that they were going to -- that they

28 had purchased and were going to remodel.

29 Q. And he throughout that time never mentioned

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1 the Jones' case, never mentioned being of counsel, or
2 anything to you like that?

3 A. Oh, no.

4 Q. I think the next thing was your decision to
5 unrecuse yourself, and we've talked about that decision
6 that you weren't forced to get back in?

7 A. Right.

8 Q. You made that choice to get back in?

9 A. I did.

10 Q. On June 28th, did you go by Mr. Balducci's
11 office again? Do you recall going by his office a
12 second time?

13 A. I don't know. Are you referring to notes of
14 mine?

15 Q. I've just got some notes here, Judge Lackey.
16 I don't know if it's in your notes or not, but do you
17 recall going to his office another time, besides the
18 time you had lunch with him, when you were wearing a
19 recording device of some type?

20 A. I don't recall that. What are you reading
21 from?

22 Q. These are just some of my notes that I've

23 got.

24 A. Your notes?

25 Q. Yes, sir.

26 A. I don't recall. I may have to tell you the
27 truth.

28 Q. You then had a hearing on July 17th. We
29 talked about that hearing that took place over in

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1 Okolona?

2 A. Okolona, yeah.

3 Q. Okay. Then we get into August. I believe
4 that some of the transcripts that I got from Mr.
5 Tollison's firm show that there were attempts to call
6 Mr. Balducci on August 3rd. You then spoke with him on
7 August 9. You said to him, Are you where we can talk
8 just a minute? Then you asked him, you asked Mr.
9 Balducci, Dickie wants this thing to go to mediation --
10 I mean, arbitration. Do you remember bringing that up
11 to Mr. Balducci in that conversation in August?

12 A. I'm sure.

13 Q. And he tells you to decide the motion however
14 you see it. He said, Yes, sir. That would be
15 terrific, if that's how you see it after you've taken a
16 look at it. If you see it that way, that's terrific.
17 Yes, sir. Do you remember him telling you that?
18 A. Yeah.

19 Q. And then you called him again at the end of
20 August. You left some messages for him. Then in early
21 September, around September the 11th I believe there
22 was a call to him and you left a message for him. You
23 say, I need to talk to you about this matter that we
24 are both concerned about and interested. I've got
25 something to run by you and see what you think. Do you
26 recall making that call to him?

27 A. I don't.

28 Q. You don't recall that one and leaving a
29 message for him?

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1 A. I don't recall.

2 Q. Again, here we are over in September and at
3 that point Mr. Balducci has not made any offers of
4 money, any quid pro quo, or anything of that sort?

5 A. Not other than what he told me a couple of
6 times during the summer about the of counsel, Mr.
7 Peters and former Governor Allain; and he told me about
8 Governor Allain cutting a tape for them on the Coast
9 for the Katrina Group and that Mr. Allain was
10 encouraging people to come sign up with them to sue the
11 insurance companies.

12 Q. And then I believe you testified earlier,
13 Judge Lackey, that the decision was made to ask for the

14 money?

15 A. It was.

16 Q. The decision was made after you had had some
17 discussions with the folks at the FBI or the U.S.
18 Attorney's Office?

19 A. They had encouraged me to do it and I had
20 reservations about it because if Tim had done what I
21 really wanted him to do and say, No, Judge. You
22 misunderstood me, then I would really be out. There I
23 am asking for a bribe.

24 Q. Right.

25 A. I was ambivalent about it. I tell you the
26 truth.

27 Q. When you called him on the 18th and first
28 mentioned this, I believe that was the day, September
29 18th, when you called Mr. Balducci, you brought up the

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1 subject of the Jones' lawsuit. You earlier testified
2 you made a statement or words to the effect of, If I
3 help him, will he help me? Is that what you said,
4 words to that effect?

5 A. I don't have a transcript of that. If you're
6 reading from a transcript, I'd like to see it, but it
7 sounds like probably what I said. Now, I'm not
8 questioning you. I'm questioning my recollection.

9 Q. Well, one reason I'm asking you, Judge

20 transcript, and I'm sure it's correct.

21 Q. I believe it came up again later on, Judge
22 Lackey, in the conversation you asked him some
23 questions. When you tell Mr. Scruggs or Dickie or
24 whatever you call him, and he told you, He's not
25 involved at that level, Judge. He doesn't even -- like
26 I said, the way this will work, the way this will work
27 is I will go him at some point in time and say I cured
28 a problem that you've had and you need to recognize the
29 problem I've cured for you. He's not involved in a

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1 direct manner and doesn't want to be and doesn't need
2 to be. Did he tell you that?

3 A. That's what he told me, but apparently, he
4 was telling me a tale because he plead guilty to doing
5 it. As I say, I misled Mr. Balducci from time to time
6 and I didn't tell him the truth, and I don't know that
7 he ever told me the truth.

8 Q. Judge Lackey, I want to back up just a minute
9 to your decision. You recused yourself from the case
10 in your meeting, I believe, with Agent Delaney?

11 A. I didn't officially recuse myself. I
12 indicated that I was going to and the order was never
13 entered, and I changed my mind.

14 Q. You met with Agent Delaney and talked about
15 it?

16 A. I did.

17 Q. And did you at some point between the time
18 that you sent out that notice and the time that you
19 sent out your second notice on June the 4th getting
20 back in, did you speak with anyone other than Agent
21 Delaney about your decision to get back in the case?

22 A. Not that I can recall.

23 Q. No one from the U.S. Attorney's Office?

24 A. Not that I recall.

25 Q. Okay.

26 A. I called Mr. Hailman to tell him. Mr.
27 Hailman was out of his office. He called my home about
28 10:30 that night and I was asleep. My wife didn't know
29 who John Hailman was, so she didn't wake me. I believe

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1 I talked to Mr. Delaney the next day, I believe. I
2 think I'm right, Cal. I may be wrong.

3 Q. And tell me, Judge Lackey. What was it that
4 Agent Delaney told you about Mr. Scruggs? What did he
5 tell?

6 BY MR. TOLLISON: Excuse me, your Honor.

7 I've been letting the hearsay in, but I'm going to
8 have to object now.

9 BY THE COURT: Sustained. This has been
10 asked and answered.

11 BY MR. MAYO: I would like to proffer it. I
12 don't think I got it in.

13 BY THE COURT: Go ahead.

14 BY MR. MAYO: (Continuing)

15 Q. What was it that Agent Delaney told you about
16 Mr. Scruggs?

17 A. Well, he indicated that there might be some
18 problem there; that there might be some problem with
19 other cases. Now, he didn't mention what other cases
20 there were. I knew from my information and if it was
21 true that Jim Hood had told Lon Stallings that Mr.
22 Scruggs through Mike Moore had promised him if he
23 didn't go along with the settlement of these State Farm
24 cases and allow them to collect this \$26.5 million in
25 attorney's fees that they would find a candidate that
26 would run against him; they would fund him just like
27 they were going to do the commissioner of insurance.
28 Now, that's what I knew.

29 BY MR. MAYO: Same objection as before, your

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1 Honor, and move to strike.

2 BY THE COURT: I think it is in response to
3 your question. Move along.

4 BY MR. MAYO: All right.

5 BY MR. MAYO: (Continuing)

6 Q. Just to be clear, Judge Lackey, that's the